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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 358th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 November 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.358/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Tunisia (CAT/C/20/Add.7)

1. At the invitation of the Chairman, Mr. Morjane, Mr. Lessir, Mr. Cherif, Mr. Ben Cheikh, Mr. Khemakhem, Mr. Naji and Mr. Chatty (Tunisia) took places at the Committee table.

2. The CHAIRMAN invited the delegation to introduce the second periodic report of Tunisia (CAT/C/20/Add.7).

3. Mr. MORJANE said that, since the submission of the initial report to the Committee on 25 April 1990, the public authorities had continued their endeavours to consolidate and perfect the observance of human rights in Tunisia. Article 5 of the Constitution embodied the concept of the inviolability of the human person and, since the advent of the new era in 1987, the Tunisian Government had concentrated on furthering democracy and on promoting and protecting human rights. In that context, in 1988 Tunisia had unconditionally ratified the Convention against Torture and had made declarations under articles 21 and 22, thereby demonstrating its commitment to the fulfilment of international human rights instruments.

4. Article 32 of the Constitution stated that duly ratified treaties prevailed over existing legislation, while subsequent legislation must be in conformity with all treaties to which Tunisia was a State party. Consequently, Tunisian law contained provisions intended to prevent torture and ill-treatment and severely punish anyone responsible for such acts. The reforms that had been introduced included the incorporation of a new article, article 13 bis, in the Code of Criminal Procedure which for the first time imposed restrictions on the duration of custody and specified the right to medical attention. An amendment to article 85 of the Code of Criminal Procedure set a limit of six months on the duration of pre-trial detention, to be imposed only in exceptional circumstances. An extension could be ordered by the examining judge after consultation with the Public Prosecutor, only once in the case of an ordinary offence and only twice in the case of a serious offence. The entire procedure was supervised by the Indictment Division, which acted as a body of second instance in investigation proceedings.

5. At the same time, education and information measures had been introduced to prevent possible excesses, by means of training programmes for judges, members of the police and prison wardens, with a view to raising their awareness of domestic and international human rights standards. The Ministry of the Interior had published a code of conduct for law enforcement officials, supplemented by a series of circulars. Special regulations had been introduced by a decree of 4 November 1998, incorporating the prison standards established by the United Nations. Article 14 of the new legislation specified the rights and duties of detainees. Disciplinary action was taken on the basis of a decision by the disciplinary board comprising a prisoners' representative and a social worker.

6. Since acts of torture could not be justified under any circumstances, Tunisian legislation contained no provisions providing for exceptions. A series of measures had been taken to promote the social rehabilitation of released prisoners which included seminars on that subject and the establishment of prison councils with the task of improving the conditions of detention, of social action offices within prisons to assist prisoners and their families, of a commission responsible for visiting prisons and prisoners, and a training school for prison personnel.

7. The second periodic report sought to provide a comprehensive overview of the implementation in Tunisia of the rights laid down by the Convention. The authorities had endeavoured to resolve difficulties, with due regard for the regional and international implications of their action, without jeopardizing the fundamental principles of human rights. Religious fundamentalism and its corollary, terrorism, had become more prevalent in Tunisia and a vast plot to overthrow the Government by violent means had been exposed. The public authorities had been obliged to take firm action, in strict compliance with the law. The persons responsible for drawing up and executing the plan belonged to the extremist "Ennahda" terrorist group.

8. Tunisia had been subject to a hostile campaign of hateful lies. Consequently, an independent Commission of Investigation chaired by Mr. Rachid Driss and composed of prominent individuals and organizations in the area of human rights had been established to look into allegations. The Commission had identified isolated cases of excesses, which had been reported in its conclusions and recommendations. The report served as a basis for action by the relevant ministries, including the criminal prosecution of those involved, under articles 101, 102 and 103 of the Penal Code. In the course of 1991 and 1992, over one hundred law enforcement officers had been prosecuted. Measures had also been introduced to provide financial assistance to victims and their families. A second report had been published in July 1992 on the extent of implementation of the recommendations contained in the Commission's first report.

9. The problems that had threatened to plunge the country into violence and chaos had strengthened the Government's determination to consolidate the rule of law. Human rights departments had been established in the Ministry of Justice, the Ministry of the Interior and Ministry of Foreign Affairs to transmit the views of citizens to government. The powers of the Higher Committee on Human Rights and Fundamental Freedoms had been extended and an Administrative Mediator had been appointed to receive complaints from individuals. In addition further judicial guarantees had been introduced to protect persons on trial.

10. The Tunisian delegation looked forward to cooperating fully and honestly with the Committee.

11. Mr. EL MASRY (Country Rapporteur) said that Tunisia had acceded to the Convention in 1988 and had made declarations under articles 21 and 22. While he appreciated the pressures to which developing countries were subjected, he would like to know why the second periodic report had been submitted four years late. The report was divided into a first section on new measures and developments between 1990 and 1993 relating to the implementation of

articles 2 to 16 of the Convention, and a second section containing additional information requested by the Committee following the consideration of the initial report.

12. The Committee welcomed the establishment in 1991 of the Higher Committee on Human Rights and Fundamental Freedoms, the appointment in 1991 of a principal adviser to the President of the Republic on human rights, and the establishment in 1992 of human rights units within the Ministries of Justice, the Interior and Foreign Affairs. Likewise, the publication of a code of conduct for law enforcement officials and the introduction of human rights training within the administration for members of the internal security forces and for judges was to be commended, as was the fact that the independent Commission of Investigation which had been established in 1991 to look into human rights violations had led to a number of convictions. The further details that had been given by delegation regarding more recent human rights measures demonstrated the commitment of the people and Government of Tunisia to human rights. However, a number of NGO reports, including the most recent Amnesty International Briefing to the Committee against Torture on Tunisia, dated November 1998, gave cause for concern.

13. Although the second periodic report covered the 1990-1993 period, the delegation should give more specific replies regarding the discrepancies between law and practice in Tunisia. Did Tunisia intend to incorporate in national legislation the Code of Conduct for Law Enforcement Officials, contained in United Nations General Assembly resolution 34/169? How had Tunisia dealt with the matter of the equally important resolution 37/194, on Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture? He welcomed the institutionalization of visits to prisons by the Chairman of the Higher Committee on Human Rights.

14. As to article 2, while the Tunisian delegate had stated that the duration of pre-trial detention had been shortened, the calculation of the periods involved in fact suggested that it had been extended to a maximum of 13 months for ordinary offences and 22 months for serious offences. It was at all events excessive. The provision in article 101 of the Penal Code against the use of violence against any person "without just cause" was open to several interpretations and did not conform with the definition of torture contained in article 1 of the Convention. It was to be noted that the conclusions and recommendations of the special Commission of Investigation in 1991 into allegations of abuses by law enforcement officials against detainees belonging to the Ennahda movement had been published and action had been taken on it.

15. Although the second report (para. 39) indicated that 88 cases had been referred to the courts and that various sentences, including prison sentences, had been handed down against offenders, to evaluate the matter properly it would be necessary to know how many original complaints had been lodged, what the nature of the abuse was, how many sentences had been handed down, and what the sentences were for each kind of abuse. All parties would be better served if detailed information was made available to the public, including the date, place, circumstances and nature of the offence, as well as the punishment that had been meted out.

16. Paragraph 177 of the report stated that Tunisian legislation categorically prohibited incommunicado detention and paragraph 180 explained that the Penal Code provided for punishment for those responsible for such detention. Yet a recent Amnesty International report said that many people had been arrested and held in secret detention for far longer than the maximum period of incommunicado detention permitted by law and that the arrests had been made by agents in plain clothes who had produced neither identification nor a warrant. Explanations would be welcome. Did Tunisian law require identification and a warrant to be shown at the time of arrest?

17. While the Committee noted with appreciation that Tunisian law did not permit extradition if the crime was of a political nature or if the extradition was requested on political grounds, article 3 of the Convention required the State party to refrain from extraditing a person to another State if he was in danger of being subjected to torture, regardless of whether the grounds were political. It was nonetheless worth mentioning that only the Tunis Court of Appeal was empowered to consider extradition applications, and neither the political nor the administrative authorities were involved in the decision.

18. The State party had indicated that torture was made a criminal act under legislative provisions prohibiting violence. And yet, violence and torture were matters of a very different nature, since certain forms of both physical and psychological violence did not need any violence. Sleep deprivation was one such example. The Tunisian Penal Code stipulated that, in order to fall within the provisions of the law, an act of violence must have been committed without justification. Such a proviso could naturally be used to evade responsibility. Did the relevant law set forth that matter in detail?

19. Paragraph 54 (b) of the report indicated that acts of violence which had no serious lasting effect on the health of the victim were punishable by 15 days' imprisonment, whereas violent acts with serious consequences were punishable by one to six years' imprisonment. The terms of article 4, paragraph 2, of the Convention called for such offences to be punishable by appropriate penalties. Clearly, the provisions set out in Tunisian law displayed no sense of proportion.

20. During the consideration of the initial report, the Committee had requested the Government to describe to what extent article 5 was enforceable under Tunisian law. By way of answer, the present report simply said the law stipulated that international instruments to which Tunisia had acceded took precedence over domestic law.

21. Paragraphs 58 to 60 summarized the rules that governed the enforcement of article 6 and then asserted that it followed from those rules that an alien taken into custody could communicate with the appropriate representative of his State, even in the absence of an express provision. What, indeed, was the reason for the absence of a written provision to that effect? Were the Tunisian authorities obliged to inform a State that one of its nationals had been detained? Laudably, paragraph 73 of the report indicated that procedures and sentences were the same, regardless of the place of the offence or the nationality of the offender, and that Tunisian law guaranteed fair treatment of the accused even after the case was closed.

22. Lastly, he wished to commend the State party for the significant progress it had made in enforcing the terms of the Convention and noted, in particular, the enactment of legislative reforms and the establishment of mechanisms for overseeing the investigative process.

23. Mr. CAMARA (Alternate Rapporteur) said that, in the code of conduct for law-enforcement personnel circulated to the members of the Committee, he had noted with interest the section describing basic principles on the role of the bar, a rare initiative among North African countries. It would be of interest to know whether those principles reflected the United Nations Basic Principles on the Role of Lawyers, formulated at the Eighth United Nations Congress on the Prevention of Crimes and the Treatment of Offenders. Another significant instrument had been formulated at that Congress, the United Nations Guidelines on the Role of Prosecutors. To his surprise, neither instrument was reflected in the Tunisian Penal Code. Nor was another major instrument, the United Nations Guidelines on the Independence of the Judiciary. Did Tunisia envisage incorporating those instruments into its criminal law, as they were just as essential for judges and lawyers as for members of the public?

24. As to article 11 of the Convention, although paragraph 88 described a reform of the Code of Criminal Procedure which limited the length of police custody to four days, it also revealed that such custody could be extended for additional periods of four and two days. That in fact added up to more than the 24- to 48-hour maximum period established by law in most countries. Experience had shown that detainees were most likely to be tortured during the period immediately after arrest. The Committee urged Tunisia to review those provisions.

25. Paragraph 88 of the report indicated that the judicial police were obliged to notify the Public Prosecutor of all arrests, but it did not say at what point notification must be furnished: at the time of the arrest, after the custody period had elapsed, or when a request was submitted for the extension of the custody?

26. A report published by the International Federation of Human Rights in November concerning human rights violations in Tunisia said that various illegal procedures were being used to cover up significant violations of the maximum period of pre-trial custody. It asserted that, at the end of the detention period noted in the logbook, the investigating judge gave a commission rogatory to the police investigator even though the defendant had never been brought before him, and that a second detention period then began under his authority, the first having been completed under that of the Public Prosecutor. Those phases apparently occurred before the defendant was allowed to contact a lawyer. The State party should reply to that allegation. In most judicial systems, once the detainee was handed over to a judge, the police were no longer empowered to interrogate him.

27. Paragraph 90 stipulated that the detainee or a relative of the detainee could request a medical examination during or at the end of the custody period, which must be noted in the record, and that the record must state the date and time of the beginning and end of the custody. What judicial sanctions, if any, applied if the judicial police failed to comply with those

regulations? More particularly, did the failure to record that information mean that the Public Prosecutor could not use the record to convict the defendant and hence was unable to have him convicted?

28. With reference to article 12, paragraph 117 of the report listed the bodies responsible for conducting and monitoring investigations into allegations of abuse by the judicial police, but did not mention the Office of the Public Prosecutor. Did that Office participate in such investigations? Paragraph 120 went on to say that the Commission of Investigation had been informed of judicial investigations and inquiries and of measures taken against those responsible. The State party should provide detailed statistical information regarding those investigations and their results. The paragraph, furthermore, used the term "disciplinary measures", whereas the Convention stipulated that all acts prohibited under its terms should be subject to criminal sanctions.

29. Paragraph 132 discussed the matter of the admissibility of criminal indemnification proceedings. On what grounds could such an action brought by a civil party be deemed inadmissible? Paragraph 135 revealed that if a civil party unsuccessfully brought such proceedings, he could incur civil and criminal liability. Was that the case if he initiated the proceedings himself, or if he joined in an action initiated by the Public Prosecutor as well? Furthermore, was he liable to sanctions simply because he had unsuccessfully brought such an action or because he had intentionally and gratuitously attempted to cause harm? The fact that it was possible to bring such a complaint could be seen as intimidating a potential complainant and might even be seen as a breach of the terms of article 13, which specified that a complainant must be protected against ill-treatment that might arise as a consequence of his complaint. Article 14 sought to create a system for the compensation of victims of torture that far exceeded compensation provided to victims of other types of crimes.

30. Finally, although paragraph 140 of the report suggested that various regulations taken together indicated that statements obtained from a person through the use of torture could not be used as evidence against him, generalizations were not sufficient. The terms of article 15 demanded a specific legal provision to categorically exclude the use, in criminal proceedings, of any confession or other information obtained through torture.

31. Again, article 16 was much broader in scope than were the provisions described in paragraphs 145 to 148. Paragraph 148 reverted to the matter of the definition of torture. For the Committee, any State party which did not incorporate in its legislation a definition of torture that was in strict conformity with that contained in article 1 failed to comply with the Convention.

32. Lastly, he would like information on the cases of Khemaïs Ksila and Ali Jallouli, who, according to the World Organization against Torture, had been tortured while in detention.

33. Mr. SILVA HENRIQUES GASPAR said that clarification was needed on several points. The report stated in effect that police custody could last as long as ten days (para. 23). Did detainees have the right to consult counsel of their

choice, and if so, could they do so immediately, or only after custody ended? When did the investigating judge examine whether the police custody imposed was lawful? The report spoke of a detainee's right to request a medical examination (para. 24). Was the doctor appointed by the authorities or freely chosen by the detainee?

34. Concerning paragraph 73, he would like further information on the regulations which governed the publication of extracts of judgements in criminal proceedings, and which appeared to be inconsistent with article 14 of the International Covenant on Civil and Political Rights. Paragraph 94 said that one of the reasons for placing a person in pre-trial detention was to ensure the authenticity of information. Such a criterion did not seem to be in conformity with article 16 of the Convention. In his view, it was simply a means of applying pressure. He would also appreciate clarification in that regard. Lastly, like other members, he was concerned about the allegations made by a number of NGOs and looked forward to the delegation's comments.

35. Mr. MAVROMMATIS said that officially there seemed to be a political will to change, but it was not followed up on the ground. Given that most ministries had a human rights department, it should have been an easy matter to investigate the many allegations made by a variety of NGOs and thus put an end to the culture of torture and ill-treatment. As he saw it, machinery needed to be put into place to help prevent torture. Training should be directed towards doing away with the sense of unlimited power and impunity that reigned in the police. It must be made clear that acts of cruel, inhuman or degrading treatment or punishment committed by public officials constituted violations of article 16 of the Convention.

36. With regard to detention, what happened when people were held incommunicado for days or even weeks? Did independent bodies regularly conduct inspections of prisons and detention centres? In his opinion, the introduction of habeas corpus rules would certainly make a tangible contribution to dealing with complaints. The failure to take appropriate measures gave the impression that the State tolerated such acts. When an allegation of torture was made, a prompt investigation by independent persons was of the utmost importance. What was the point of having a Higher Committee on Human Rights and Fundamental Freedoms if it needed prior permission to inspect prisons? On the contrary, such a body must be able to make visits unannounced.

37. Surely, the delegation could hardly expect the Committee to take seriously the assertion in paragraph 19 that abuses of authority against private property by public officials were classified as torture. In addition, the length of pre-trial detention had apparently been shortened, but he still failed to see what could possibly justify detaining a person for as much as nine or even twelve months for a minor offence.

38. Mr. YAKOVLEV said that new legislation could not be implemented overnight, particularly in complex situations, but reports on the actual situation in Tunisia gave cause for deep concern. Good law was one thing, its implementation in practice was another. Torture was a reflection of the general atmosphere in the country. The more open and democratic a society, the less likely it was that torture was practised.

39. Perhaps the delegation would respond, first, to the allegation contained in Amnesty International's 1998 annual report that an amendment to the law on the external security of the State, approved by the Government in September 1997 and awaiting ratification by Parliament, proposed making contacts with agents of foreign or international organizations a crime punishable by five to twelve years' imprisonment and, second, to Amnesty International's claim that there were 2,000 political prisoners in Tunisia. It would be useful to know whether the bodies which monitored the implementation of the Convention were independent of the executive branch.

40. In 1994, in its consideration of the report submitted by Tunisia under article 40 of the Covenant (CCPR/C/79/Add.43), the Human Rights Committee had concluded that the sections of the Press Code dealing with defamation, insult and false information unduly limited the exercise of freedom of opinion and expression as provided for under article 19 of the Covenant. It had also expressed concern that the Associations Act might seriously undermine the enjoyment of freedom of association and that the Political Parties Act and the conditions imposed on the activities of political parties did not appear to be in conformity with articles 22 and 25 of the Covenant. Could the delegation inform the Committee of developments in those areas since 1994?

41. The CHAIRMAN said that he agreed with Mr. Camara on the need for clarity on the incorporation of the definition of torture into domestic law. As for the period of incommunicado detention, even four days were four days too many. Ten days constituted an incredibly long and dangerous period, and he expressed deep concern about that matter.

42. Material in the report and from non-governmental sources pointed to a discrepancy between the law and actual practice. The best law could be effective only if the police, prosecutors and judges understood their role. He had been shocked by the assertion made at a recent meeting of NGOs that prosecutors and judges were not independent. Could the delegation explain how such persons were appointed, how they were dismissed and what the grounds were for dismissal?

43. How many women were incarcerated in Tunisia? Were they segregated from the male prison population and were they supervised by female correctional personnel. He also wished to know why female staff were not present when female detainees or prisoners were being interrogated, especially during police questioning and incommunicado detention.

44. He asked the delegation to comment specifically on a number of allegations contained in a report on Tunisia published by Amnesty International in June 1997. The report alleged that in recent years the wives and relatives of prisoners and exiled opponents of the Government had been detained, interrogated and subjected to torture and ill-treatment, including sexual abuse, with a view to "punishing" them for remaining in contact with their exiled husbands and relatives and putting pressure on them to end such contacts. Women were forced to report to the police, gendarmerie, National Guard stations or the Ministry of the Interior on a weekly or daily basis or even twice a day. During interrogation they were usually questioned about their contacts with their exiled or imprisoned husbands and about the source of the funds they used to buy clothes, schoolbags or even food.

Anybody, including relatives, who gave them financial help was liable to prosecution for "unauthorized collection of funds". Dozens of women had allegedly been undressed, threatened with rape and sexually abused during interrogation in the Ministry of the Interior and in police and National Guard stations across the country. In a number of instances, pressure had been put on them to divorce their imprisoned or exiled husbands. Women were also unable to obtain a passport and prevented from leaving the country. They were left with the choice between agreeing never to see their husbands again or attempting to escape illegally and running the risk of long-term imprisonment if they were caught. In both cases, the family unit was destroyed by State policies. Such acts were violations of article 16 of the Convention.

45. If true, those allegations were a terrible indictment of a State which, publicly and in terms of its legal institutions, appeared to be committed to the protection of human rights and the autonomy of the individual.

The public part of the meeting rose at 12.20 p.m.